

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

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**NYNEX COMMENTS ON
JOINT BOARD RECOMMENDATION**

The NYNEX Telephone Companies

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SUMMARY

The Joint Board's *Recommended Decision* did not resolve several critical issues in this proceeding, including the method of assessing contributions to the universal service fund and the method of recovering those contributions. The Commission should resolve these issues in a way that carries out the intent of Congress and that conforms to the jurisdictional limits on the Commission's authority. The best way to do that would be to enlist the voluntary participation of the state regulatory commissions in the federal fund. The Commission could provide that a state would receive support from the federal universal service fund only if it adopted provisions for assessing contributions on intrastate revenues, for recovering contributions from intrastate revenues, and for eliminating implicit subsidies from intrastate revenues, that were consistent with the Commission's universal service policies.

Absent state participation, the Commission should not adopt the Joint Board's recommendation that universal service support mechanisms for schools, libraries and rural health care providers should be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services net of payments to other carriers. This recommendation is inconsistent with Section 254, and it exceeds the Commission's jurisdictional authority if the Commission contemplates recovery of the intrastate portion of carrier contributions through state rates. The Commission also should not adopt the

Joint Board's recommendation to prohibit the carriers from using surcharges on retail revenues to recover their universal service contributions. This would not ensure that the local exchange carriers ("LECs"), who are the only carriers subject to regulatory controls over their prices, would have a reasonable opportunity to recover their assessments for the universal service fund. If the Commission did not provide a reasonable means for the LECs to recover their contributions, it would amount to a "taking" under the Fifth Amendment to the Constitution.

Contributions to the universal service fund should be based on retail revenues. This would best carry out the intent of Congress, and it would ensure competitive neutrality. To make universal service support explicit, contributions should be recovered through surcharges on retail rates. Carriers who receive universal service funds for high cost support should use those funds to reduce rates that currently provide implicit support for universal service, such as access charges, toll rates, and rates for vertical features.

The Commission should adopt the Joint Board's recommendation to increase the amount of Lifeline support. In addition, the Commission should adopt rules to ensure that the states do not reduce their current levels of matching Lifeline support, unless the combined amount of federal and state support exceeds the rates for basic residential telephone service, including the interstate subscriber line charge.

To avoid arbitrage, the Commission should coordinate the geographic area that determines the level of high-cost support with the geographic area used for deaveraging the rates for unbundled network elements.

Since the Joint Board recommended use of forward looking costs when developing support for high-cost areas, and since the rates for unbundled network elements are unlikely to cover embedded costs, the Commission should deal with the issue of recovering embedded costs in the upcoming proceeding on access charge reform.

The Joint Board's recommendation for a fund of \$2.25 billion to achieve the "full classroom" model, under which all of the nation's classrooms would be connected with networked computers by the year 2000, is too ambitious. A more workable goal would be to achieve the full classroom model by the year 2005, which could be accomplished with a fund of \$1.5 billion per year.

Finally, the Joint Board NYNEX agrees that the National Exchange Carrier Association's ("NECA's") advocacy functions, which tend to represent the views of small LECs, would detract from the perception that it would be a neutral administrator of the universal service fund. NYNEX believes that NECA should be considered for the position of fund administrator if it spun off its advocacy functions from its activities as an administrator of industry funds.

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NYNEX COMMENTS ON JOINT BOARD RECOMMENDATION

The NYNEX Telephone Companies¹ ("NYNEX") hereby file their
Comments on the issues raised by the Joint Board in its November 7, 1996
Recommended Decision,² as described in the Commission's November 18, 1996
Public Notice.³

I. Introduction

In the Public Notice, the Commission asked for comments on the Joint
Board's recommendations regarding universal service, and on the Commission's

¹ The NYNEX Telephone Companies are New York Telephone Company and
New England Telephone and Telegraph Company.

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket
No. 96-45, Recommended Decision, FCC 96J-3, released November 8, 1996
("Recommended Decision").

³ See Public Notice DA 96 1891, CC Docket No. 96-45, released November 18,
1996.

legal authority to implement such recommendations.⁴ In particular, the Commission listed several areas where the Joint Board recommended that the Commission solicit additional information.

The Joint Board did not reach a final recommendation on one of the most critical issues in this investigation -- the basis for assessing and recovering universal service funding obligations for high-cost and low income assistance from telecommunications carriers. However, insofar as the Joint Board did issue recommendations on certain funding issues, those recommendations raise serious statutory and constitutional questions. For instance, the Joint Board recommended that (1) universal service support mechanisms for schools, libraries and rural health care providers should be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services, net of payments to other carriers; and (2) carriers should not use surcharges on retail revenues to recover their universal service contributions. The first recommendation is subject to challenge that it is inconsistent with Section 254 and that it exceeds the limits on the Commission's jurisdiction in Section 2(b) of the Act. The second does not ensure that the local exchange carriers ("LECs"), who are the only carriers subject to regulatory controls over their prices, will have a reasonable opportunity to recover their assessments for the universal service fund.

⁴ See *id.* at p. 2.

In these comments, NYNEX addresses the issues raised in the Public Notice, and it proposes mechanisms for allocating and recovering universal service contributions among interstate telecommunications carriers that are consistent with the universal service principles set forth in Section 254 of the Act, that are consistent with the limits on the Commission's jurisdiction, and that would provide regulated carriers with a reasonable means of recovering the costs of their participation in the universal service fund. NYNEX demonstrates that the Commission should enlist the voluntary participation of the states if it wants to assess universal service contributions on the basis of both interstate and intrastate revenues. The Commission could provide that a state would receive support from the federal universal service fund only if it adopted provisions for assessing contributions on intrastate revenues, for recovering contributions from intrastate revenues, and for eliminating implicit subsidies from intrastate revenues, that were consistent with the Commission's universal service policies.

II. Principles of Competitive Neutrality Should Require Explicit Funding Mechanisms That Are Apparent To The End User.

Issue: How should the additional principles of competitive neutrality be defined and applied within the context of universal service?

In the *Recommended Decision*, the Joint Board recommended that the Commission establish "competitive neutrality" as an additional principle upon which to base its policies for universal service, as permitted by Section 254(b)(7)

of the Act.⁵ NYNEX believes that the principle of competitive neutrality should include the following policies:

All carriers providing service in a retail market should contribute to the universal service fund based on the same proportion of their retail revenues.

Support should be portable between carriers.

Universal service support should not interfere with the operation of free market mechanisms, and it should not discourage deployment of efficient technologies.

The assistance mechanism should not impose excessive subsidy burdens upon ratepayers or suppress demand for certain services.

Support should be explicit, and the funding mechanism should be apparent to the end user, rather than hidden in rates.

Support should not favor one type of carrier, or one technology, over another, or create an opportunity for arbitrage.

Basing contributions on a percentage of a carrier's retail revenues would best promote the principle of competitive neutrality. It would not distort market demand, because all carriers' prices would be affected proportionately. In contrast, an assessment mechanism that was based on the number of lines, minutes, fiber miles, or other such measures would favor one carrier over another depending on its mix of traffic and facilities, and it could provide an incentive for a carrier to make inefficient infrastructure choices. As is discussed below, the Commission should limit its assessment mechanism to interstate retail revenues to conform to the intent of Section 254 and to the limits on the

⁵ See *Recommended Decision*, para. 23.

Commission's ratemaking jurisdiction unless it adopts a plan for the voluntary participation of the states.

The Commission should allow the LECs to recover their contributions to the fund through an explicit surcharge on end users' bills.⁶ This would make it clear to consumers how much of a carrier's bill represented universal service obligations, as opposed to the carrier's own pricing decisions. For instance, if the surcharge increased one year, a customer would not interpret that as a discretionary price increase by the carrier, and that increase alone would not motivate the customer to switch carriers.

The Joint Board's interpretation of competitive neutrality includes the concept of technological neutrality, which would make wireless carriers eligible for universal service support.⁷ This could create an administrative problem, since there is no dedicated "loop" for wireless service, and since a wireless carrier could claim it was providing universal service to a customer even if the customer did not use, or own, a mobile phone. Therefore, if the Commission adopts this recommendation, the Commission should ensure that a wireless carrier could receive universal service support only if (1) it was providing the

⁶ Since other carriers, such as competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are non-regulated, they are free to use a surcharge or any other pricing mechanism to recover their universal service contributions from end users. Given their regulatory flexibility, it is most likely that these carriers will opt for a surcharge that they would attribute to a federally-mandated requirement, rather than raise their retail rates to cover these obligations.

⁷ See *Recommended Decision*, paras. 23, 47, 53.

only service to a customer, or (2) the customer designated the wireless carrier as the primary carrier and the customer was required to pay a non-subsidized rate for any wireline service to the same residence. Also, wireless carriers should be eligible to receive universal service support only if the Commission requires wireless carriers to contribute to the universal service fund.

III. The Joint Board's Recommendations For Low-Income Support Would Substantially Increase The Amount Of Support For Lifeline Customers.

Issue: What baseline amount of support should be provided to low-income consumers? Is the \$5.25 baseline amount suggested in the Recommended Decision likely to be adequate? How can the FCC avoid the unintended consequence that the increased federal support amount has no direct effect on Lifeline subscribers' rates in many populous states with Lifeline programs, and instead results only in a larger percentage of total support being generated from federal sources?

The current federal Lifeline Assistance program subsidizes low income customers based on a state-established means test. The program reduces the subscriber line charge ("SLC") by 50% if intrastate monthly local exchange rates are reduced by an equivalent amount. The SLC is waived in full if the state assistance equals or exceeds \$3.50 per month. Lifeline assistance is provided for only one access line per-subscriber. All IXC's who have at least 0.05% of presubscribed lines ("PSLs") nationwide contribute to the Lifeline fund on a flat-

rate, per-PSL basis. NECA disburses Lifeline funds to the LECs to compensate for SLC revenues that the LECs do not collect from Lifeline end-user customers.⁸

The Joint Board recommended that Lifeline support be extended to all states, and that the Commission eliminate the state matching requirement and provide for a baseline level of federal support of \$5.25.⁹ In addition to the baseline federal support, the Joint Board recommended that the Commission match one dollar of federal contribution for every two dollars of state lifeline support. The maximum amount of these federal matching funds would be \$1.75; consequently federal Lifeline support would be capped at \$7.00 per line, per month.¹⁰

The national average interstate loop cost per line is slightly higher than \$5.53.¹¹ Currently, the difference between the federal Lifeline support of \$3.50 and the full interstate loop cost is recovered implicitly through LECs' interstate carrier common line ("CCL") charges. An increase in the amount of interstate baseline lifeline support from \$3.50 to \$5.25 would result in recovering almost the full interstate cost of Lifeline loops from the Lifeline fund.

⁸ See 47 C.F.R. Sections 69.104; 69.117; 69.116.

⁹ See *Recommended Decision*, paras. 417-419. The Joint Board also recommended that, in order to be eligible for support from the new national universal service support mechanism, carriers must offer Lifeline assistance to eligible low-income customers. See *id.*, para. 417.

¹⁰ See *id.*, para. 419.

¹¹ See Monitoring Report, CC Docket No. 87-339, Table 5.10, May 1996. While the 1995 national average rate for a multi-line SLC is \$5.53, the average cost is somewhat higher because the multi-line business SLC is capped at \$6.00.

Currently, NYNEX provides Lifeline support in its state tariffs that matches or exceeds the amount of federal Lifeline support in all its states except New Hampshire. See Chart 1 below.

CHART 1

State	1995 Lifeline Customers	Amount of Federal Lifeline Support	State Lifeline Support	Amount of State Lifeline Support	NYNEX Interstate Loop Cost per Line	CCL implicit support for Lifeline loops
A	B	$C = B * \$3.50 * 12$	D	$E = B * D * 12$	F	$G = (F - \$3.50) * 12 * B$
Maine	52,387	\$2,200,254	\$3.50	\$2,200,254	\$6.60	\$1,948,796
Massachusetts	170,090	\$7,143,780	\$6.00	\$12,246,480	\$6.60	\$6,327,348
New Hampshire	0	\$0	\$0	\$0	\$6.60	\$0
Rhode Island	40,808	\$1,713,936	\$3.50	\$1,713,936	\$6.60	\$1,518,058
Vermont	22,330	\$937,860	\$6.78	\$1,816,769	\$6.60	\$830,676
New York	626,669	\$26,320,098	\$5.60	\$42,112,156	\$6.60	\$23,312,087
Total NYNEX	912,283	\$38,315,928	N/A	\$60,089,595	\$6.60	\$33,936,965

Source: Columns B and D, NYNEX 1996 Annual Access Filing; transmittal No. 420: June 27, 1996.

The chart shows that the NYNEX's average interstate loop cost per line is about \$6.60 per month. NYNEX receives \$3.50 per month of explicit federal support from the Lifeline Assistance fund for every Lifeline customer. The 1995 amount is about \$38 million. The remainder of interstate Lifeline loop costs (*i.e.*, \$6.60 minus \$3.50) is recovered implicitly through NYNEX's interstate CCL charges. These implicit interstate subsidies are about \$34 million for 1995. As far

as the state Lifeline support is concerned, in most cases NYNEX recovers these subsidies implicitly through its state rates.¹²

The Joint Board's recommendation to increase federal Lifeline Support to \$5.25 is likely to have a significant effect on Lifeline subscribers' rates. As is shown in Chart 1, the states in the NYNEX region currently provide up to twice the level of federal Lifeline support. In all states except New Hampshire, the level of state support would justify the maximum level of \$7.00 in federal support. Thus, for example, the total amount of support in New York would increase from \$9.10 to \$12.60 per month per Lifeline customer. Even if New Hampshire did not provide matching funds, Lifeline subscribers in that state would receive \$5.25 in support that they do not receive today.

To ensure that the Lifeline customer receives the benefit of the increase in federal support, the Commission should provide that the base amount will increase only if a state does not reduce its current level of Lifeline support, provided that the combination of federal and state support does not exceed the lowest monthly state rate for local telephone service, including the interstate SLC.

¹² The Joint Board noted this implicit subsidy, and it recommended that states be required to raise matching funds for Lifeline service in a manner that is consistent with the Commission's rules. *See Recommended Decision* at para. 422. Since the Commission has no jurisdiction over state rates, the best way to deal with this issue is to make replacement of implicit state subsidies a condition of providing interstate Lifeline assistance to each state.

IV. The Commission Should Resolve the Administrative Issues Of How To Collect Fund Contributions, How The Carriers Will Recover Those Contributions, And What Rate Changes The Carriers Should Make When They Receive Universal Service Support.

Issue: Should contributions for high-cost and low-income support mechanisms be based on the intrastate and interstate revenues of carriers that provide interstate telecommunications services, based on the factors enumerated in the Recommended Decision? Should the intrastate nature of the services supported by the high-cost and low-income funds have a bearing on the revenue base for assessing funds? Should contributing carriers' abilities to identify separately intrastate and interstate revenues in an evolving telecommunications market and carriers' incentives to shift revenues between jurisdictions to avoid contributions have a bearing on this question?

The Joint Board recommended that support for schools, libraries and rural health care providers be funded by assessing both the intrastate and interstate gross revenues of interstate telecommunications service providers, net of payments to other telecommunications carriers.¹³ The Commission requested comments on whether contributions for high-cost and low income support should also be based on these revenues. The Joint Board made no recommendation as to how carriers are to collect from customers the universal service payments they contribute to the fund, or what rate adjustments the carriers should make to offset the revenues they receive from the high-cost fund.

¹³ See *Recommended Decision*, para. 817.

The Commission needs to address three issues in the area of administration of the fund. First is the issue of the basis for allocating universal service contributions among carriers. Section 254(d) of the Act states that all providers of interstate telecommunications services shall contribute to the fund, but it does not specify the method of contribution, other than that contributions shall be made on an "equitable and nondiscriminatory basis." Second is the issue of how regulated carriers will recover their contributions to the fund. These contributions will be booked as either increases in costs or as reductions in revenues. In either event, the carriers will need the ability to increase existing rates, or to apply a surcharge or other type of new rate element, to recover their contributions.¹⁴ The third issue is what rate adjustments the carriers should make when they receive funds from the universal service fund. For example, the carriers could use those funds to provide discounts for supported services, such as services to schools and libraries, or to replace implicit subsidies for universal service that are currently incorporated in access charges, toll rates, and rates for other services, such as vertical features.

As NYNEX discusses below, the partial recommendations that the Joint Board made regarding administration of the fund raise serious statutory and

¹⁴ The Joint Board rejected the concept of a retail surcharge, but it did not propose any alternative recovery method. *See id.*, para. 812. The Joint Board found that a retail surcharge would "violate the statutory requirement that carriers, not consumers, finance support mechanisms." This confuses the issue of which persons will contribute to the fund with the issue of how those persons will recover their contributions.

jurisdictional issues. The proposal to assess contributions to the federal universal service fund based on both interstate and intrastate revenues is inconsistent with the intent of Section 254 and with Section 2(b) of the Act, which excludes intrastate communications services from the Commission's jurisdiction. In addition, it would be difficult for the Commission to develop a means for the LECs to recover contributions based on intrastate revenues, and to ensure that universal service support for state services is applied as the Commission intended, without running afoul of the statutory limitations on the Commission's jurisdiction.

If the Commission wants to broaden the base for funding universal service to include intrastate revenues, it should make state participation voluntary. The Commission could provide that universal service funding would not be available to support state costs in a particular state unless the state commission authorized assessments on state revenues, adjustments to state rates, and cost recovery in state rates consistently with the federal plan. The states, which generally share the Commission's commitment to universal service, would have a strong incentive to follow the Commission's guidelines in order to obtain support from the federal fund.

A. The Commission Should Not Apply The Federal Universal Service Fund To Intrastate Revenues Without The Cooperation Of The States.

With regard to the issue of how to assess contributions to the universal service fund, there is no question that any carrier that provides interstate telecommunications services can be required to contribute under Section 254(d). However, it is equally certain that Section 254 does not extend the Commission's jurisdiction to allow it to assess a contribution based on a carrier's intrastate business or revenues if the intent of the assessment is to create an intrastate cost that is to be recovered in intrastate rates. Therefore, the Commission should not adopt the Joint Board's recommendation that the Commission should allocate universal service contributions among interstate carriers based on both their intrastate and interstate revenues unless the state commission exercises its jurisdiction to require carriers to make contributions based on intrastate revenues.

Congress clearly intended for the Commission to limit the federal universal service fund to the interstate operations of interstate carriers. Section 254 was based on the Senate bill, with modifications.¹⁵ The corresponding section of the Senate bill stated that;

Every telecommunications carrier engaged in intrastate, interstate, or foreign communication shall participate, on an equitable and nondiscriminatory basis, in the specific and predictable mechanisms established by the Commission and the States to preserve and advance

¹⁵ See S. Rep. No. 230, 104th Cong., 2d Sess., 130 (1996) ("Joint Explanatory Statement").

universal service. Such participation shall be in the manner determined by the Commission and the States to be reasonably necessary to preserve and advance universal service. Any other provider of telecommunications may be required to participate in the preservation and advancement of universal service, if the public interest so requires.¹⁶

In conference, this section was modified to remove the reference to intrastate and foreign communications, to remove the reference to the States, and to add the term "interstate" to the last sentence (allowing the Commission to require other providers of interstate telecommunications to contribute to the universal service fund). The final bill was designed to "preserve the Commission's authority to require all providers of interstate telecommunications," but not providers of intrastate communications, to contribute to the fund set up by the Commission.¹⁷ The States were removed from the decision-making process for the federal fund (except for their representation on the Joint Board), but they retained the ability to develop separate state funds under Section 254(f) to support universal service in each state.

These changes clearly were designed to limit the federal universal service fund to interstate support for universal service, and to limit the contributors to interstate carriers. They were part of a number of other revisions in conference

¹⁶ S. 652, 104th Cong., 1st Sess., Section 253(c) (1995) (emphasis added); see Joint Explanatory Statement, p. 129.

¹⁷ Joint Explanatory Statement, p. 131 (emphasis supplied).

that were also designed to limit the Commission's role to interstate matters and to prevent the Commission from affecting state rates. For instance, both the House and Senate bills would have added Part II, Title II of the amended Communications Act (which includes the interconnection, unbundling, and pricing requirements) to the list of provisions that are exempted from Section 2(b) of the Act, which generally prohibits the Commission from regulating intrastate communications.¹⁸ The conference report deleted that language. Similarly, the House bill expressly assigned the Commission authority over the interconnection and pricing of local service elements.¹⁹ It also gave the States only a limited role of "supervis[ing]" negotiations between carriers under the Commission's pricing rules.²⁰ These provisions did not become law. The conference report eliminated the Commission's authority to issue pricing regulations, and it gave the States the authority to arbitrate open issues, subject to pricing rules set forth in the Act.²¹ Thus, the final version of Section 254(d) was part of a broad effort by the conferees to limit the FCC's role to interstate matters.

The final version of Section 254 gives the Commission exclusive authority to develop an interstate universal service fund, to be supported only by interstate

¹⁸ See H.R. 1555, 104th Cong., 1st Sess., Section 101(e)(1) (1995); S. 652, 104th Cong., 1st Sess., Section 101(c)(2) (1995).

¹⁹ See H.R. 1555, 104th Cong., 1st Sess., Section 242(b)(4)(c) (1995).

²⁰ See *id.*, Section 242(a)(8).

²¹ See 47 U.S.C. Sections 252(b)(4)(C), 252(c)(2).

carriers, and it gives the states exclusive authority to develop state universal service funds, to be supported by intrastate carriers.²² This simple and straightforward division of responsibilities between the Commission and the State agencies would be undermined if the Commission used both the interstate and the intrastate revenues of interstate telecommunications providers as a basis for allocating contributions to the federal universal service fund.²³

In the past, the Commission has dealt with the jurisdictional issue by assigning universal service costs (*i.e.*, high-cost assistance), through the separations process, to the interstate jurisdiction, where the costs can then be recovered through interstate rate elements. For example, the existing universal service fund provides that LECs with total loop costs above 115 percent of the nationwide average for such costs can allocate additional amounts of loop costs to the interstate jurisdiction.²⁴ These costs are reported to the fund administrator, who develops a tariffed interstate charge paid by the IXC that is based on the number of lines that are presubscribed to each IXC. The IXCs recover their contributions to the fund through their tariffed interstate charges.

²² Compare Section 254(d) with Section 254(f); see also Section 254(a), which empowers the Commission to adopt only "federal" universal service support mechanisms.

²³ Since, as noted, almost all intrastate carriers provide some sort of interstate telecommunications service, such as exchange access service, an interpretation of Section 254(d) to permit the interstate fund to assess contributions based on revenues from intrastate revenues would render meaningless Congress' decision to delete the word "intrastate" from Section 254(d).

²⁴ See *Recommended Decision*, para. 188.

Thus, the LEC costs are reported to the interstate jurisdiction, the fund is assessed among IXCs through an interstate tariff, and the IXCs recover their contributions in the interstate jurisdiction.

The Commission could follow a similar approach in the new universal service funding mechanism. By applying the Federal universal service assessment only on interstate revenues, the Commission could preserve the authority of the states to fund state universal service objectives through separate assessments on state telecommunications revenues in accordance with Section 254(f) of the Act.²⁵ This flexibility would allow the states to raise revenues as needed to fund universal service in each state. For example, California has approved a state universal service fund based on a surcharge on state local revenues.²⁶ The staff of the New York State Department of Public Service has proposed that state support for low income customers, E911, hearing impaired,

²⁵ The Commission questions whether carriers would have an incentive to shift revenues between jurisdictions if the fund were not assessed on both interstate and intrastate revenues. See Public Notice, p. 2. The carriers have been reporting their revenues split by state and interstate since 1993 for purposes of the telecommunications relay services ("TRS") fund. The TRS requirement will not stop. A sudden decline or abnormality in the interstate revenues of a carrier could be detected easily. However, the entry of new carriers, and the introduction of new technologies, together with the much larger size of the new universal service fund, would provide a greater opportunity and incentive to misreport revenues. The Commission would need to give the fund administrator the ability to request information, and to conduct reasonable audits, if a carrier's revenue reports were inconsistent with the structure of its network and the range of services it offered.

²⁶ See Calif. PUC Approves \$351 Million State Universal Service Program; Local Competition Report, November 11, 1996.

and high-cost assistance be based on state revenues, and not on state and interstate revenues.²⁷

In its comments, NYNEX showed that an assessment on interstate retail revenues by the Commission would best carry out the objectives of Section 254. It would avoid double counting of wholesale revenues and thus avoid double payments of universal service support by certain carriers. The TRS funding mechanism, which is based on gross interstate revenues, is already in place, and only minor adjustments would be required to develop interstate retail revenues. This method of funding would ensure that all carriers made a fair and predictable contribution to universal service support.

Use of retail revenues, rather than gross revenues net of payments to other carriers, as recommended by the Joint Board, would best carry out the intent of Congress. As shown in Chart 2 below, use of gross revenues shifts a large amount of universal service payments to the LECs. This would be neither fair, equitable, or non-discriminatory.²⁸

²⁷ See New York State Department of Public Service, Universal Service Issues, A Staff Report in Module 1, May 16, 1995.

²⁸ It also would discourage carriers from building their own local exchange facilities, since carriers cannot deduct the costs of such facilities from their universal service contribution, while they could deduct the cost of facilities purchased from other carriers.

Chart 2
Contributions Based On Interstate Revenues

Measure of Revenues	IXCs	LECs	Other
Interstate Retail	81%	14%	5%
Gross Interstate Revenues Net of Payments to Other Carriers	55%	40%	5%

Source: Calculated from: TRS Fund Worksheet Data, Tables 3 - 22; FCC Industry Analysis Division, February 1996.

When Congress decided that only interstate carriers would contribute to the interstate universal service fund, it probably had the existing IXCs in mind, plus any retail interstate services provided by the LECs. It would be contrary to the plain meaning of "interstate" to use an allocation method that would shift much of the obligation to the LECs, who are primarily intrastate carriers. Use of retail interstate revenues as the allocator would ensure that the end user rates of all interstate carriers would bear an equivalent burden of supporting universal service. It also would allow the states to develop state universal service funds to which the LECs would be the primary contributors.

If the Commission assessed contributions to the interstate fund based on an interstate telecommunications carrier's gross interstate and intrastate revenues net of payments to other carriers, as the Joint Board proposed for support for schools, libraries and health care providers, it would shift an even larger burden of universal service support to the LECs. This is shown below in Chart 3, which compares the contributions of LECs, IXCs, and other carriers